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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/835,121      | 04/13/2001  | Margaret M. Leahy    | OSJ-002             | 4218             |

959                  7590                  12/13/2002

LAHIVE & COCKFIELD  
28 STATE STREET  
BOSTON, MA 02109

[REDACTED] EXAMINER

COE, SUSAN D

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1654

DATE MAILED: 12/13/2002 11

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/835,121             | LEAHY ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Susan Coe              | 1654                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 October 2002.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9 and 11-23 is/are pending in the application.
- 4a) Of the above claim(s) 9, 12, 13 and 15-20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11, 14 and 21-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>7</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

**DETAILED ACTION**

1. The amendment filed October 4, 2002, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 1-8 and 10 have been cancelled.
3. Claims 9 and 11-23 are pending.
4. In Paper No. 5, applicant elected with traverse of Group V, claims 11 and 14-23 and phenolic acid, specifically cinnamic acid for species D. Claims 9, 12, 13, and 15-20 are withdrawn from further consideration.
5. Claims 11, 14, and 21-23 are examined on the merits.

***Claim Rejections - 35 USC § 102***

6. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Marwan et al. (J. Food Sci. (1982), vol. 47, no. 3, pp. 774-778) for the reasons set forth on page 3 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the compounds isolated by Marwan are not suitable for administration to a subject. However, since the chemicals isolated by Marwan are the same chemicals that are claimed, it is unclear what characteristics of the chemicals of Marwan make them unsuitable for administration.

7. Claims 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Merck Index (Budavari et al., eds. (1989). Merck and Co., Inc.: New Jersey, pp. 358, entry 2300) for the reasons set forth on page 4 of the previous Office action.

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All of applicant's arguments regarding this ground of rejection have been fully considered. Applicant argues the reference does not teach the claims because the reference does not teach isolating the chemical from cranberry. However, the claims are drawn to a composition of cinnamic acid not a method for isolating cinnamic acid. Cinnamic acid is the same compound regardless of the source of the acid. Therefore, the limitation of isolation from cranberry is not considered to make the composition of cinnamic acid taught by the Merck Index patentably distinct from the claimed composition because the compositions are the same.

In addition, applicant argues that the compound in the Merck Index is not suitable for administration to a subject. However, since the composition taught by the reference is the same as the claimed composition, it is unclear what characteristics of the reference composition make it unsuitable for administration.

8. Claims 11, 14, and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Camire et al. (J. Food Prot. (1980), vol. 43, no. 1, pp.36-37) for the reasons set forth on page 4 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the cinnamic acid used in Camire was not isolated from cranberry. However, the claims are drawn to a composition of cinnamic acid not a method for isolating cinnamic acid. Cinnamic acid is the same compound regardless of the source of the acid. Therefore, the limitation of isolation from cranberry is not considered to make the composition of cinnamic acid taught by the Camire patentably distinct from the claimed composition because the compositions are the same.

Applicant also argues that Camire teaches away from adding cinnamic acid to the cranberry juice because Camire teaches that the cinnamic acid does not increase the stability of the cranberry juice. However, this argument is not persuasive because this is a 102 rejection. The reference teaches a composition of cinnamic acid in forms that encompass the administration forms claimed by applicant. Since Camire has disclosed a composition that meets all of applicant's claimed limitations, the claimed composition is not patentably distinct from what was disclosed in the reference.

9. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The

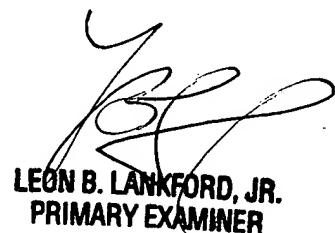
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examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
December 9, 2002



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER